

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CHRISTOPHER DAVIS,
on behalf of himself and all others similarly situated,

CLASS ACTION COMPLAINT

Plaintiff,

-against-

CAPITAL MANAGEMENT SERVICES L.P.

Defendant
-----X

JUDGE KARAS

Plaintiff, by and through his undersigned attorney, alleges upon knowledge as to himself and his own acts, and as to all other matters upon information and belief, brings this complaint against the above-named defendant and in support thereof alleges the following:

PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf and on behalf of all others similarly situated for damages and declaratory and injunctive relief arising from the defendant's violation of §1692 *et seq.* of Title 15 of the United States Code, the Fair Debt Collections Practices Act (hereinafter "FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331. This is an action for violation of 15 U.S.C. § 1692.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2).

PARTIES

4. Plaintiff Christopher Davis is a resident of the State of New York, Westchester County. On or about September 25, 2007, plaintiff received an initial debt collection notice from defendant Capital Management Services, LP.

5. Defendant Capital Management Services L.P. is a Delaware Limited Partnership engaged in the business of collecting debts. Defendant regularly attempts to collect debts alleged to be due another.

CLASS ACTION ALLEGATIONS

6. Plaintiff brings this action as a nationwide class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure (hereinafter "FRCP"), on behalf of himself and all consumers who have received debt collection notices and/or letters from the defendant which are in violation of the FDCPA, as of the date of plaintiff's complaint, and their successors in interest (the "Class"). Excluded from the Class is the defendant herein, and any person, firm, trust, corporation, or other entity related to or affiliated with the defendant, including, without limitation, persons who are officers, directors, employees, associates or partners of Capital Management Services, LP.

7. This action is properly maintained as a class action. This Class satisfies all the requirements of Rule 23 for maintaining a class action.

8. The Class is so numerous that joinder of all members is impracticable. Upon information and belief, hundreds of persons have received debt collection notices from the defendant which violate various provisions of the FDCPA.

9. There are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. These common questions of law and fact include, without limitation:

a. Whether the defendant violated various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(10), 1692g(a)(4) and 1692g(a)(5).

b. Whether plaintiff and the Class have been injured by the defendant's conduct;

c. Whether plaintiff and the Class have sustained damages and are entitled to restitution as a result of defendant's wrongdoing and, if so, what is the proper measure and appropriate statutory formula to be applied in determining such damages and restitution; and

d. Whether plaintiff and the Class are entitled to declaratory and/or injunctive relief.

10. Plaintiff's claims are typical of the claims of the Class, and plaintiff has no interests adverse or antagonistic to the interests of other members of the Class.

11. Plaintiff will fairly and adequately protect the interests of the Class and has retained experienced counsel, competent in the prosecution of class action litigation.

12. A class action is superior to other methods for the fair and efficient adjudication of the claims herein asserted. Plaintiff anticipates that no unusual difficulties are likely to be encountered in the management of this class action.

13. A class action will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would engender. Class treatment also will permit the adjudication of relatively small claims by many Class members who could not otherwise afford to seek legal redress for the wrongs complained of herein. Absent a class action the Class members will continue to suffer losses of statutorily protected rights as well as monetary damages and if defendant's conduct will proceed without remedy it will continue to reap and retain the proceeds of its ill-gotten gains.

14. Defendant has acted on grounds generally applicable to the entire Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

STATEMENT OF FACTS

15. On or about September 25, 2007, defendant did send to the plaintiff an initial collection letter. Copy of said letter is annexed hereto as Exhibit A.
16. The April 1, 2007 collection letter stated that the Current Creditor of the account at issue was LVNV Funding LLC.
17. The letter further stated that the "Previous Creditor: OSI/GULF STATE CREDIT-ORIGINAL CRED."
18. Defendant received a timely letter of dispute which disputed the validity of the debt, disputed that LVNV Funding LLC was the current creditor, requested verification of the debt and requested the name and address of the original creditor. Exhibit B.
19. Defendant Capital Management Services, LP responded by letter dated October 25, 2007, which stated "[C]apital Management Services LP is no longer servicing your account." Exhibit C.
20. Defendant employed false representations by referencing as the original creditor OSI/GULF STATE CREDIT, when OSI/GULF STATE CREDIT is not the original creditor.
21. Defendant deceptively attempts to collect debt it can neither verify nor ascertain basic information. Exhibit C.
22. As a result of defendant's abusive, deceptive and unfair debt collection practices, plaintiff has been damaged.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

23. Each of the above allegations is incorporated herein.

24. Defendant's debt collection attempts violate various provisions of the FDCPA, including but not limited to 15 U.S.C. §§ 1692e, 1692e(10), 1692g, 1692g(a)(4) and 1692g(a)(5), by publishing that OSI/GULF STATE CREDIT is the original creditor, when in fact it is deceptively attempting to collect debts which it cannot evidence either the present creditor nor the original creditor.

25. As a result of defendant's violations of the FDCPA, plaintiff has been damaged and is entitled to statutory damages, costs and attorney's fees.

WHEREFORE, plaintiff respectfully requests that the Court enter judgment as follows:

- a) Declaring that this action is properly maintainable as a class action and certifying plaintiff as Class representative;
- b) Awarding plaintiff statutory damages;
- c) Awarding class members the maximum statutory damages.
- d) Awarding plaintiff costs of this action, including reasonable attorneys' fees and expenses; and
- e) Awarding plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the FRCP, plaintiff hereby demands a trial by jury.

Dated: September 24, 2008
Uniondale, New York

A handwritten signature in black ink, appearing to read 'Abraham Kleinman', is written over a horizontal line.

Abraham Kleinman (AK-6300)
KLEINMAN LLC
626 RexCorp Plaza
Uniondale, New York 11556-0626
Telephone (516) 522-2621
Facsimile (888) 522-1692

726 Exchange Street, Suite 700
Buffalo, New York 14210

ADDRESS SERVICE REQUESTED



CAPITAL MANAGEMENT SERVICES, LP
726 Exchange Street - Suite 700, Buffalo, NY 14210
Office Hours: M-Th 8 a.m. - 11 p.m. ET
Fri 8 a.m. - 10 p.m., Sat 8 a.m. - 4 p.m. ET
Sun 9 a.m. - 1 p.m. ET
Toll Free: 1-877-219-6629, Fax: (716) 852-1620



#BWNJTIB *****AUTO**MIXED AADC 140 T3 P1
#0244760815#



Christopher Davis
2907 Lexington Ave
Mohrman Lake, NY 10547-1836

Previous Creditor: OSN/GULF STATE CREDIT-ORIGINAL CRED
Current Creditor: LVNV FUNDING LLC
Account #: 352058599
Balance: \$11604.05
AMOUNT ENCLOSED: _____

PLEASE DETACH AND RETURN TOP PORTION WITH PAYMENT

September 25, 2007

Dear Christopher Davis:

This company has been engaged by Resurgent Capital Services, LP, the servicer of the account, to resolve your delinquent debt of \$11604.05. Please submit your payment and make your check or money order payable to Capital Management Services, LP, to the above address.

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days from receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different than the current creditor.

Our representatives are trained to offer assistance regarding this obligation. For payment arrangements or account inquiries, you may contact Capital Management Services, LP, at 726 Exchange Street, Suite 700, Buffalo, NY 14210 or call 1-877-219-6629 Mon. through Thurs. 8 am to 11 pm ET, Fri. 8 am to 10 pm ET, Sat. 8 am to 4 pm ET or Sun. 9 am to 1 pm ET. You may also make payments online at: www.cms-trans.com.

Please see important privacy information included with this notice.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

ADDITIONAL INFORMATION FOR NEW YORK CITY RESIDENTS

This collection agency is licensed by the New York City Department of Consumer Affairs, License No. 1242722.

THE KATZ LAW FIRM, PC

Attorneys at Law

85 Highview Road

Suffern, NY 10901

Tel: (845) 290-9678

Fax: (845) 503-2341

David M. Katz

*Admitted in New York & New Jersey

October 24, 2007

SENT VIA FACSIMILE

Capital Management Services, LP

726 Exchange Street

Suite 700

Buffalo, NY 14210

**Re: Christopher Davis
Account #352058599**

To Whom It May Concern,

Please be advised that I represent Christopher Davis. Please be advised that Christopher Davis disputes the validity of this debt, your reference #352058599. Please send me written verification of this disputed debt.

My client further disputes that LVNV Funding LLC is the current creditor. Please send me the name of the original creditor. Please send me the address of the original creditor.

Sincerely,



David M. Katz

EXHIBIT C

726 Exchange Street, Suite 700
Buffalo, NY 14210
Tel: (716) 871-9050
Fax: (716) 852-1620

Capital Management Services, LP.

October 25, 2007

David Katz Esq.
85 Highview Rd.
Suffern, NY 10901

Re: Christopher Davis- 352058599

Dear Mr. Katz:

We are in receipt of your correspondence requesting information regarding your account. However, Capital Management Services, LP is no longer servicing your account. We have forwarded your correspondence to Resurgent Capital Services, LP.

This is an attempt to collect a debt; any information obtained will be used for that purpose. This communication is from a debt collector.

Important information may be found on the back of this letter. We are required under state law to notify consumers of the following rights. This list does not contain a complete list of the rights consumers have under state and federal law.

Sincerely,

Capital Management Services, LP.